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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3911 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

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2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No

GUJARAT STATE ROAD TRANSPORT CORPORTATION

Versus

GAMBHIRSINH M MAKWANA

Appearance:

MR SN SHELAT for Petitioner

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 21/07/97

ORAL JUDGEMENT

Gujarat State Road Transport Corporation has filed the present petition under article 227 of the Constitution of India to challenge the order of

Industrial Tribunal, Gujarat State, Ahmedabad in Ref.(IT) No. 60/80 passed on 18.2.85.

2. The respondent workman Gambhirsinh M Makwana was working as a conductor in the Junagadh division of the petitioner corporation. When he was on duty on 1.8.78 on the Himatnagar - Ambaji route his bus was checked at Khedbrahma and at that time it was found that the passengers who had boarded the bus at Idar and who were to get down at Khedbrahma were not issued tickets. Thereafter a departmental inquiry was held against himand on finding that the charges levelled against him were proved, he was punished by withholding his increment for 6 months with permanent effect. Said action of the petitioner corporation was challenged by the respondent through his union i.e. S.T.Karmachari Mandal before the Labour Authorities and on account of the same Ref.(IT) No. 60/80 came up before the Industrial Tribunal, Gujarat at Ahmedabad. Though initially the departmental inquiry was challenged by alleging that it was against the principles of natural justice, at the time of hearing of the said dispute, said contention was dropped and the legality and propriety of the inquiry was not challenged and on the contrary legality and propriety of the departmental inquiry was accepted. The only contention raised before the Industrial Court was that the punishment awarded to the workman respondent was inadequate. It was contended that the workman had ten years of service without any blemish and there was no attempt to make misappropriation and that the act in question was only an act of negligence and the workman had explained his conduct by saying that he could not issue tickets on account of heavy rush. The learned Presiding Officer of the Industrial Tribunal was pleased to accept the said contention and he interfered with the order of punishment and awarded punishment of withholding his increment for six months without permanent effect.

3. Being aggrieved by the said order the corporation has come up before this Court. It is the contention of the corporation that in view of the provisions of section 11-A of the I.D. Act the Industrial Tribunal is entitled to substitution of the punishment by the order of dismissal and/or termination from service. Powers under section 11-A could not be exercised by the Industrial Tribunal when the Disciplinary Authority has passed the order for minor penalty of stopping increment for six months with or without future effect. Thus the main contention raised on behalf of the petitioner is that the order passed by the learned Industrial Tribunal in interfering with the order of punishment passed by the disciplinary authority is illegal and improper.

3. This petition was admitted and interim relief for not implementing the order of the Tribunal was also granted but neither the respondent nor anybody on his behalf put in appearance. Even today neither the respondent nor anybody has appeared. Similarly neither the petitioner nor its advocate is present. But in view of the fact that the petition is pending for more than 12 years, I proceed to dispose of the same finally on merits.

4. At the cost of repetition it must be stated that though the workman had initially contended that the departmental inquiry held against him was against the principle of natural justice, said contention was given up by him at the time of hearing before the Industrial Court and legality and propriety of the departmental inquiry was accepted and only submissions were made as regards the punishment. Section 11A of the Industrial Disputes Act 1947 is running as under:

" 11-A Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen: Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may required.

Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

If the heading of the said section is considered then it would be quite clear that powers of the Industrial Court to interfere with the order of punishment is only in case if the order is of discharge

or dismissal and in case if the said order of discharge or dismissal was not justified. The Division Bench of this court in the case of G.S.R.T.C vs Prabhashanker K. Acharya 1992(2) GLH 354 has considered the provisions of section 11-A of the Act and powers of Industrial Tribunal and has laid down the following principles:

" The effect and change in the law by S.11A is however, relating to the punishment of discharge and dismissal and not for other kinds of punishment. Managerial rights are now restricted to that extent under S.11A and the jurisdiction of the Labour Court and the Tribunal is widened to that extent so far as the finding of misconduct and the punishment of discharge and dismissal are concerned. The law on the point for other kinds of punishment except the punishment of discharge or dismissal remains unaffected by the provisions of S.11A, Industrial Disputes Act.

The powers and jurisdiction of the Labour Court and the Industrial Tribunal to interfere with the finding of misconduct and order imposing the punishment other than the punishment of discharge or dismissal is restricted even though the Labour Court or Tribunal has wider powers than revisional powers. It cannot exercised the powers of an appellate authority and reappraised the evidence and set aside the finding only because the other view is possible or even plausible. The Labour Court or the Tribunal also cannot interfere with the nature or the quantum of the punishment casually because it considers to impose other kind of punishment or to impose lesser punishment that the one awarded by the management. The Tribunal can interfere with the finding of misconduct or the nature and the quantum of the punishment only under the circumstances as set out above and specifically by various judicial pronouncements. The Tribunal can interfere with the finding of the management in the following circumstances;

(1) Want of good faith.
(2) Victimizations or unfair Labour practice.
(3) Basic error or violation of principles of natural justice.
(4) Finding completely baseless or perverse.
(6) Punishment shockingly disproportionate regard being had to the particular conduct or the

past, record or is such that no reasonable employer would even impose in like circumstances unless he is actuated by considerations of victimisation or unfair Labour practice.

The above circumstances are illustrative and not exhaustive and the Tribunal can interfere with the finding or the punishment in circumstances alike also, but the Tribunal cannot interfere with the finding or nature and quantum of punishment casually or as if exercising appellate jurisdiction.

The submission of the learned Advocate for the management that the Tribunal has no jurisdiction at all to interfere with the order in inquiry in which the punishment other than that of the discharge or dismissal is imposed, cannot be accepted. The Advocate for the management submits that provisions of S.11A Industrial Disputes Act only empower the Tribunal to interfere with the order in which punishment of discharge or dismissal is imposed and in no other order and, therefore, the Tribunal cannot interfere with any other order in which the other punishment is imposed. There is no provision under the Act prohibiting the Tribunal in exercising the jurisdiction except in the case of punishment of discharge or dismissal. We have extensively discussed the provisions of Ss. 7,7A and 15 and the Schedule, and it is evident that the Tribunal has jurisdiction even to interfere with the order imposing the punishment other than that of discharge or dismissal. Even prior to the incorporation of S.. 11A Industrial Disputes Act, the jurisdiction of the Tribunal to interfere with the order of punishment is recognized and accepted by the courts, of course, that is only under certain circumstances as discussed above."

5. If the order of the Industrial Tribunal is seen then it is very difficult to hold that he was justified in interfering with the order of punishment passed by the disciplinary authority. The learned Presiding officer of the Industrial Tribunal had also found that the passengers had boarded the bus at Idar and they were to get down at Khedbrahma and at Khedbrahma itself the bus was checked and at that time it was found that no tickets were issued by him to the passengers. The distance between Idar to Khedbrahma is about 50 kms and the

explanation given by the conductor that he could not issue tickets because of the rush was not found proper by the disciplinary authority and therefore, in the circumstances, the learned Presiding Officer of the Industrial Court was not justified in interfering with the discretionary passed by the disciplinary authority. Section 11A of the I.D.Act does not empower him to interfere with the said discretionary power when the sentence was not either of discharge or dismissal. Therefore, in the circumstances I hold that the present petition will have to be allowed and the order of the learned Presiding Officer, Industrial Tribunal will have to be quashed and set aside. Thus the order of punishment awarded by the learned Presiding officer of the Industrial Tribunal will have to be quashed and set aside. Thus the order of punishment awarded by the Presiding officer, Industrial Tribunal Gujarat in favour of the respondent Gambhirsinh M. Makwana in Ref.(IT) No. 60/80 is quashed and set aside and the order passed by the disciplinary authority is maintained . Rule made absolute. No order as to costs.

(S.D.Pandit.J)